



AIDAR revisions to Competition and Publicizing of Personal Services Contracts (PSCs); and Class Justification and Approval (J&A) for Limited Competition for Overseas PSCs and Local Purchases

A Mandatory Reference for ADS Chapter 302 and 309

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This document contains:

- Revisions to AIDAR sections 705 and 706, and Appendices D and J on publicizing and competition of personal services contracts based on class deviation M/OAA-DEV-AIDAR-17-02c (Tab 1).
- A Class Justification and Approval (J&A) for Other than Full and Open Competition Covering Certain Categories of Personal Services Contracts (PSCs) and Overseas Contracts for Local Purchases of \$250,000 or Less (Tab 2).
- A summary chart on publicizing and competition for personal services contracts (Tab 3).

Required Actions:

Contracting Officers (COs) (including EXOs) must adhere to the publicizing and competition requirements specified in the attached AIDAR revision when using the Class Justification and Approval (J&A) and other exceptions to competition and must follow the guidance below.

GUIDANCE:**Competition**

The solicitation and award of personal services contracts are subject to full and open competition in accordance with (48 CFR) FAR Part 6. Any exception to competition must be justified in accordance with (48 CFR) FAR 6.303.

AIDAR 706.302-70(b)(1) provides COs an exception from the requirements of full and open competition for PSCs servicing abroad. This exception does not apply to USPSCs serving in the United States.

COs using this AIDAR exception must ensure that the following limitations in (48 CFR) AIDAR 706.302-70(c) are met:

- (i) Offers must be requested from as many potential offerors as is practicable under the circumstances, and
- (ii) A justification (J&A) supporting other than full and open competition must be prepared in accordance with FAR 6.303 and approved in accordance with (48 CFR) FAR 6.304.

The Senior Procurement Executive signed a revised class J&A for certain categories of procurements to relieve COs of the administrative burden of preparing individual J&As as required in FAR 6.303. The class J&A is available as Tab 2 below. This revised class J&A supersedes the class J&A dated July 10, 1997. The class justification can be used for local purchases of \$250,000 or less made by overseas contracting activities and for personal services contracts with Resident Hire USPSCs, and CCN and TCN PSCs subject to the local compensation plan.

Section II of the class J&A specifies the conditions that must be met when the class J&A is used. When these requirements are not met, the CO must prepare an individual J&A, following the requirements in FAR 6.303 and obtain the necessary approvals as specified in FAR 6.304.

Publicizing

Solicitations for personal services contracts must be publicized through the GPE located at <http://www.fedbizopps.gov> (FBO) to meet the requirements of (48 CFR) FAR Part 5. However, in accordance with a written determination made by the Senior Procurement Executive (SPE) based on FAR 5.102(a)(5)(iii), COs do not need to publicize solicitations for awards issued under the authority in AIDAR 706.302-70(b)(1) for the following categories of PSCs serving abroad:

- (i) Resident Hire USPSCs, and CCN and TCN PSCs paid under the local compensation plan. This includes new awards as well as extensions and renewals with the same individual for the same services at the same mission; and
- (ii) USPSCs for services abroad of six months or less. Contracts awarded under this authority must not be extended or renewed. Note that this exception to publicizing does not automatically authorize limited competition. When using this exception to publicizing, the contracting officer must prepare and publicize in the GPE (www.fedbizopps.gov) an individual J&A for other than full and open competition in accordance with FAR 6.303 and must follow the other requirements in the AIDAR 706.302-70(c).

As provided in AIDAR 705.202, advance notice of proposed contract action is not required for the categories of PSCs in paragraphs (i) and (ii) above.

In addition, pursuant to a written determination made by the SPE based on FAR 5.102(a)(5)(iii), COs do not need to publicize solicitations for extensions or renewals of USPSCs with the same individual for continuous services at the same mission when the authority in AIDAR 706.302-70(b)(5) is used. However, when using this publicizing exception the CO must:

- (i) Prepare a J&A in accordance with FAR 6.303, and make the J&A publicly available within 14 days of contract award through the GPE (www.fedbizopps.gov) as required in FAR 6.305; and follow the other requirements in AIDAR 706.302-70(c);
- (ii) For extensions in excess of one year or over \$250,000, the CO must obtain the approval of the Agency Competition Advocate, as required in AIDAR 706.302-70(c) by submitting the J&A to the M/OAA J&A mailbox at justificationsanda@usaid.gov; and

- (iii) Publicize the synopsis of proposed contract action through the GPE (www.fedbizopps.gov) in accordance with FAR 5.201, as required in AIDAR 706.302-70(c).

POINT OF CONTACT:

USAID Contracting Officers may direct their questions to pscpolicymailbox@usaid.gov

Tab 1

**REVISIONS TO THE AIDAR, AND APPENDICES D AND J
ON COMPETITION AND PUBLICIZING OF
PERSONAL SERVICES CONTRACTS
BASED ON CLASS DEVIATION
M/OAA-DEV-AIDAR-17-02c**

Subpart 705.1—DISSEMINATION OF INFORMATION

705.102 Availability of solicitations.

In accordance with FAR 5.102(a)(5)(iii), the Senior Procurement Executive has determined that access through the GPE is not in the Government's interest for the following solicitations:

(a) A locally hired personal services contractor (Resident Hire USPSC and Cooperating Country National or Third Country National personal services contractor paid under the local compensation plan) awarded under the authorities in 706.302-70(b)(1). This includes extensions and renewals with the same individual for the same services at the same mission.

(b) A USPSC for six months or less in duration for services abroad awarded under the authorities in 706.302-70(b)(1). Such awards cannot be extended or renewed.

(c) A local purchase made under the authorities in 706.302-70(b)(2).

(d) An extension or renewal of a USPSC with the same individual for the same services at the same mission, or operating unit within a Bureau or Independent Office awarded under the authorities in 706.302-70(b)(5).

706.302-70 Impairment of foreign aid programs.

(Class Deviation M/OAA-DEV-AIDAR-17-02c)

(a) *Authority.* (1) Citation: 40 U.S.C. 113.

(2) Full and open competition need not be obtained when it would impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid, relief, and rehabilitation.

(b) *Application.* This authority may be used for:

(1) An award under section 636(a)(3) of the Foreign Assistance Act of 1961, as amended, involving a personal services contractor serving abroad;

(2) An award of \$250,000 or less by an overseas contracting activity;

(3)(i) An award for which the Assistant Administrator responsible for the project or program makes a formal written Determination and Findings (D&F), that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the foreign assistance program; or

(ii) Awards for countries, regions, projects, or programs for which the Administrator of USAID makes a formal written Determination and Findings (D&F), that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the foreign assistance program.

(4) Awards under (48 CFR) AIDAR 715.370-1 (Title XII selection procedure—general) or 715.370-2 (Title XII selection procedure—collaborative assistance).

(5) An award for the continued provision of highly specialized services when award to another resource would result in substantial additional costs to the Government or would result in unacceptable delays.

(c) *Limitations.*

(1) A contract awarded using the authority in paragraph (a) of this section must be supported by the written justification and approval (J&As) described in (48 CFR) FAR 6.303 and 6.304, except that a determination made under 706.302-70(b)(3) will not be subject to the requirement for contracting officer certification or to approvals required in (48 CFR) FAR 6.304.

A class justification has been approved by the Senior Procurement Executive to meet the requirements in (48 CFR) FAR 6.303 and is available in internal agency policy at ADS chapters 302 and 309, for use under the following circumstances:

(i) When competition is limited based on the authorities in 706.302-70(b)(1) for the following categories of personal services contractors serving abroad:

(A) Resident Hire U.S. personal services contractors (USPSCs), as defined in (48 CFR) AIDAR Appendix D.

(B) Cooperating country national (CCN) or third country national (TCN) personal services contractors paid under a local compensation plan, as defined in (48 CFR) AIDAR Appendix J.

(ii) When competition is limited based on the authorities in 706.302-70(b)(2), for local purchases of \$250,000 or less by an overseas contracting activity.

When using the class justification, the contracting officer must ensure that all conditions and file documentation requirements of the class justification have been met.

(2) Proposals must be requested from as many potential offerors as is practicable under the circumstances;

(3) When using the authorities in 706.302-70(b)(4) and 706.302-70(b)(5) the contracting officer must publicize the advance notice of proposed contract action as required in (48 CFR) FAR 5.201. However, when the authorities at 706.302-70(b)(1) through 706.302-70(b)(3) are used advance notice of proposed contract action is not required in accordance with (48 CFR) AIDAR 705.202.

(4) The authority in 706.302-70(b)(3)(i) shall be used only when no other authority provided in (48 CFR) FAR 6.302 or (48 CFR) AIDAR 706.302 is suitable. The specific foreign assistance objective that would be impaired must be identified and explained in a written Determination and Finding (D&F). Prior consultation with the Agency Competition Advocate (see 706.501) is required before executing the written D&F, and this consultation must be reflected in the D&F. In addition, the contracting activity must prepare a J&A as required in paragraph (c) (1) of this section.

(5) Use of the authority in 706.302-70(b)(5) for proposed follow-on modifications and awards for the continued provision of highly specialized services in excess of one year or over \$250,000 is subject to the approval of the Agency Competition Advocate. For all other follow-on modifications and awards using this authority, the contracting officer's certification required in (48 CFR) FAR 6.303-2(b)(12) will serve as approval.

APPENDIX D TO CHAPTER 7—DIRECT USAID CONTRACTS WITH A U.S. CITIZEN OR A U.S. RESIDENT ALIEN FOR PERSONAL SERVICES ABROAD

1. General.

(Class Deviation M/OAA-DEV-AIDAR-17-02c)

(b) Definitions.

(5) Resident Hire U.S. Personal Services Contractor means a U.S. citizen or resident alien who, at the time of hire as a PSC, resides in the cooperating country --

(i) for reasons other than employment that provides for repatriation to the U. S., including --

(A) with a U.S. government agency;

(B) under any U.S. government-financed contract or agreement; or

(C) under any other contract or employment arrangement.

(ii) as a spouse or dependent of a U.S. citizen with employment that provides for repatriation to the U.S., including --

(A) with a U.S. government agency;

(B) under any U.S. government-financed contract or agreement; or

(C) under any other contract or employment arrangement.

5. Publicizing and Competition of Personal Services Contracts.

(Class Deviation M/OAA-DEV-AIDAR-17-02c)

(a) *Publicizing.* Solicitations for personal services contracts must be publicized in the GPE located at <http://www.fedbizopps.gov> (FBO) to meet the requirements of (48 CFR) FAR part 5. In addition to publicizing in the GPE, the M/OAA Director, acting as Head of the Agency under the authority of AIDAR 701.601(a)(1), has authorized USAID contracting officers to place paid advertisements and notices in newspapers and periodicals. This specific authorization is found in AIDAR 705.502 and is subject to the requirements and limitations in (48 CFR) FAR subpart 5.1. Any advertisements and notices in addition to the GPE must be approved by the cognizant CO and must not be released prior to publication in the GPE.

(b) Exceptions to publicizing.

(1) In accordance with a determination made by the Senior Procurement Executive in AIDAR 705.102, the contracting officer does not need to publicize in the GPE solicitations for awards issued under the authorities in (48 CFR) AIDAR 706.302-70(b)(1) and AIDAR 706.302-70(b)(5) for the categories of PSCs listed below. This exception must not be used for USPSCs serving in the United States, its territories and possessions, and does not authorize the contracting officer to limit competition unless the required exceptions to competition have been met.

- (i) A Resident Hire U.S. personal services contractor (USPSC), as defined in this Appendix, awarded under the authority in (48 CFR) AIDAR 706.302-70(b)(1);
- (ii) A USPSC for six months or less in duration for services abroad awarded under the authorities in 706.302-70(b)(1).
- (iii) An extension or renewal of a USPSC with the same individual for the same services at the same mission, or operating unit within a Bureau or Independent Office awarded under the authority in (48 CFR) AIDAR 706.302-70(b)(5).

(2) As required in (48 CFR) FAR 5.201, when using the authorities in 706.302-70(b)(5) the contracting officer must publicize the advance notice of proposed contract action in the GPE. However, when the authority at 706.302-70(b)(1) is used, advance notice of proposed contract action is not required in accordance with the Head of Agency determination in (48 CFR) AIDAR 705.202.

(c) Competition. Personal services contracts are subject to full and open competition in accordance with (48 CFR) FAR Part 6. Any exception to competition must be authorized, prepared and approved in accordance with (48 CFR) FAR Part 6 and AIDAR part 706.

(d) Other than Full and Open Competition.

(1) (48 CFR) AIDAR 706.302-70(b)(1) authorizes, under certain conditions, contracting for personal services abroad without providing for full and open competition. This authority must not be used for USPSCs serving in the United States, its territories and possessions. When using this exception for USPSCs serving abroad, the contracting officer must ensure the following limitations in (48 CFR) AIDAR 706.302-70(c) are met:

(i) As required in FAR 6.301, offers must be requested from as many potential offerors as is practicable under the circumstances, and

(ii) A J&A supporting other than full and open competition must be prepared in accordance with (48 CFR) FAR 6.303 and approved in accordance with (48 CFR) FAR 6.304.

For Resident Hire USPSCs a class J&A has been approved by the USAID Senior Procurement Executive and is available in the Automated Directive System (ADS) Chapter 309. When using the class J&A, the contracting officer must prepare and sign a written statement that the contract is being awarded pursuant to (48 CFR) AIDAR 706.302-70(b)(1); the conditions for use of the class justification have been met; and the cost of the contract is fair and reasonable. If the appropriate limited competitive procedures and other conditions of the class J&A are not met, the contracting officer must prepare a separate J&A as required under (48 CFR) AIDAR 706.302-70(c). The class J&A must not be used for USPSCs recruited from outside the cooperating country (internationally-hired) or for USPSCs serving in the United States.

(2) (48 CFR) AIDAR 706.302-70(b)(5) authorizes awarding an extension or renewal of a USPSC with the same individual for the same services at the same mission, or operating unit within a Bureau or Independent Office without providing full and open competition. When using this exception the contracting officer must:

(i) Prepare a J&A in accordance with (48 CFR) FAR 6.303; publicize the J&A as required by (48 CFR) FAR 6.305; and meet other requirements in (48 CFR) AIDAR 706.302-70(c);

(ii) For an extension in excess of one year or over \$250,000, obtain the approval of the Agency Competition Advocate, as required in (48 CFR) AIDAR 706.302-70(c); and

(iii) Publicize the synopsis of proposed contract action in accordance with (48 CFR) FAR 5.201, as required in (48 CFR) AIDAR 706.302-70(c).

12. General Provisions

1. Definitions

(Class Deviation M/OAA-DEV-AIDAR-17-02c)

Definitions (June 1990)

(p) *Resident Hire U.S. Personal Services Contractor (PSC)* means a U.S. citizen or resident alien who, at the time of hire as a PSC, resides in the cooperating country --

(i) for reasons other than employment that provides for repatriation to the U.S., including --

(A) with a U.S. Government agency;

(B) under any U.S. Government-financed contract or agreement; or

(C) under any other contract or employment arrangement.

(ii) as a spouse or dependent of a U.S. citizen with employment that provides for repatriation to the U.S., including --

(A) with a U.S. Government agency;

(B) under any U.S. Government-financed contract or agreement; or

(C) under any other contract or employment arrangement.

A U.S. citizen for purposes of this definition also includes persons who at the time of contracting are lawfully admitted permanent residents of the United States.

APPENDIX J TO CHAPTER 7—DIRECT USAID CONTRACTS WITH A COOPERATING COUNTRY NATIONAL AND WITH A THIRD COUNTRY NATIONAL FOR PERSONAL SERVICES ABROAD

5. Soliciting for Personal Services Contracts

(Class Deviation M/OAA-DEV-AIDAR-17-02c)

(a) *Publicizing.* As authorized by the M/OAA Director in AIDAR 705.502, the contracting officers may place paid advertisements and notices in newspapers and periodicals, subject to the requirements and limitations in (48 CFR) FAR subpart 5.1. Any advertisements and notices must be approved by the cognizant CO and when applicable, must not be released prior to publication in the GPE.

(b) *Exceptions to publicizing.*

(1) (48 CFR) FAR part 5 requires that solicitations for personal services contracts be publicized in the GPE. However, based on a determination made by the Senior Procurement Executive in AIDAR 705.102, the contracting officer does not need to publicize in the GPE solicitations for new awards, extensions or renewals for CCN and TCN PSCs paid under the local compensation plan issued under the authority in (48 CFR) AIDAR 706.302-70(b)(1). The contracting officer must follow the requirements below when using this exception.

- (i) New contracts for CCN and TCN PSCs paid under the local compensation plan must be publicized consistent with Mission/Embassy practice on announcement of other locally hired CCN positions;
- (ii) Renewals or extensions with the same individual for continuing service at the same mission do not need to be publicized.

(2) In accordance with (48 CFR) AIDAR 705.202, advance notice of proposed contract action is not required when the exception to competition authority at 706.302-70(b)(1) is used.

(c) **Competition.**

Personal services contracts are subject to full and open competition in accordance with (48 CFR) FAR part 6. Any exception to competition must be authorized, prepared and approved in accordance with (48 CFR) FAR part 6 and AIDAR part 706.

(d) **Other than Full and Open Competition.**

(1) (48 CFR) AIDAR 706.302-70(b)(1) authorizes contracting with CCNs and TCNs for personal services abroad without providing for full and open competition when the limitations in (48 CFR) AIDAR 706.302-70(c) listed below are met. This authority must not be used for contracts with TCNs who are not paid under the local compensation plan.

(i) As required in FAR 6.301, offers must be requested from as many potential offerors as is practicable under the circumstances, and

(ii) A J&A supporting other than full and open competition must be prepared in accordance with FAR 6.303.

For contracts with CCNs and TCNs subject to the local compensation plan a class J&A has been approved by the USAID Senior Procurement Executive and is available in the Automated Directive System (ADS) Chapter 309. When using the class J&A, the contracting officer must prepare and sign a written statement that the contract is being awarded pursuant to (48 CFR) AIDAR 706.302-70(b)(1); the conditions for use of the class justification have been met; and the cost of the contract is fair and reasonable. If the appropriate limited competitive procedures and other conditions of the class J&A are not met, the contracting officer must prepare a separate J&A as required under (48 CFR) AIDAR 706.302-70(c).

TAB 2

**U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT (USAID)
CLASS JUSTIFICATION AND APPROVAL (J&A) FOR OTHER
THAN FULL AND OPEN COMPETITION COVERING:
1) PERSONAL SERVICES CONTRACTS (PSCs) WITH:
RESIDENT HIRE U.S.PSCs, CCN/ TCN PSCs SUBJECT
TO THE LOCAL COMPENSATION PLAN AND:
2) OVERSEAS CONTRACTS OF \$250,000 OR LESS.**

This document is a class justification and approval for other than full and open competition for certain categories of personal services contracts issued under the authorities of (48 CFR Chapter 7) AIDAR 706.302-70 (b)(1) and for overseas contracts for local purchases of \$250,000 or less issued under the authority of (48 CFR) AIDAR 706.302-70(b)(2).

This class J&A may be used in accordance with its terms by USAID contracting officers acting within the scope of their delegated authority. When using this class J&A, contracting officers must ensure that each contract action executed pursuant to the authority of this class J&A is within the scope of the class J&A and that the appropriate requirements for competition in Section II, Conditions for Use of this class J&A are followed. This class justification must not be used if only one source was considered, except for extensions or renewals with Resident Hire USPSCs and CCN and TCN PSCs subject to the Local Compensation Plan.

SECTION 1. FACTS AND RATIONALE
(as required by (48 CFR) FAR 6.303-2)

(1) Identification of the agency and the contracting activity, and specific identification of the document as a “Justification for Other than Full and Open Competition.”

This document sets forth the facts and rationale justifying USAID’s use of other than full and open competition, in accordance with AIDAR 706.302-70(b)(1) and 706.302-70(b)(2). This document was prepared by M/OAA/P in conjunction with proposed revisions to AIDAR 706.302-70 and AIDAR Appendices D and J.

(2) The nature and/or description of the action being approved:

This class J&A may be used to satisfy the requirements of AIDAR 706.302-70(c)(2) regarding preparation of a Justification and Approval (J&A) pursuant to FAR 6.303. It applies only to the types of procurements specified below.

- 1) For the following types of Personal Services Contracts (PSCs) as authorized by 40 U.S.C. 113 and stated in AIDAR 706.302-70(b)(1):

- a) Resident Hire U.S. Personal Services Contracts (USPSCs), as defined in AIDAR Appendix D; and
 - b) Cooperating Country National (CCN) and Third Country National (TCN) personal services contracts (PSCs), subject to the local compensation plan, as defined in AIDAR Appendix J;
- 2) For local purchases of \$250,000 or less, awarded by an overseas contracting activity pursuant to AIDAR 706.302-70(b)(2).

This class J&A may be used only when all of the conditions in Section II of this document are met.

(3) Description of the supplies or services required, including an estimated value:

The Agency contracts for Resident Hire USPSCs to obtain the needed skills not available in the cooperating country, help with workload, cover agency needs for activities of limited duration or respond to natural disasters. In FY 2015, about ten percent of the approximately 400 USPSC awards executed by the Agency for services abroad were Resident Hires.

In FY 2015 the Agency's Cooperating Country National (CCN) ¹workforce consisted of close to 6,000 individuals. The agency obligated over \$200 million to cover salaries, benefits and other expenses associated with the CCN workforce. Historically USAID recruited Foreign Service National (FSN) direct-hire employees to perform vital mission program and support functions at USAID missions worldwide. In the early 1980s, the agency converted from hiring FSN direct-hire employees to executing personal services contracts with cooperating country nationals (CCNs) to continue providing much-needed in-country support and expertise.

For local purchases of up to \$250,000, USAID missions obligate approximately \$45 million annually in approximately 3,000 procurement transactions to obtain goods and services locally under purchase orders and contracts.

(4) An identification of the statutory authority permitting other than full and open competition.

Statutory authority permitting other than full and open competition under this class J&A is 40 U.S.C 113(e)(2), as stated in AIDAR 706.302-70(a).

(5) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition that requires use of the authority cited:

¹ For the purpose of this class J&A, the term CCNs also includes TCNs subject to the local compensation plan.

Under the authorities of 40 U.S.C 113, the Administrator of USAID made a written determination that following the requirements of full and open competition for awards specified in AIDAR 706.302-70 (b)(1) and (2) would impair implementation of USAID foreign assistance objectives. Further, to relieve contracting officers of the considerable administrative burden in preparing separate justifications for certain contract actions excluded from full and open competition requirements under the AIDAR 706.302-70 (b)(1) and 706.302-70(b)(2), the Senior Procurement Executive signed a class Justification for other than full and open competition, which was issued in CIB 97-16 on July 10, 1997. This document is a revised class J&A that conforms to the requirements in the FAR Section 6.303-2 and supersedes the class J&A dated July 10, 1997. This class J&A can only be used for certain categories of awards (specified in #2 above) issued under the authorities in AIDAR 706.302-70(b)(1) and 706.302-70(b)(2).

This class J&A must not be used when only one source is considered, except for extensions or renewals with CCNs and TCNs subject to the Local Compensation Plan, and Resident Hire USPSCs.

(6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by FAR subpart 5.2 and, if not, which exception under FAR 5.202 or AIDAR 705.202 applies.

Under (48 CFR) AIDAR 705.202(b), the head of the U.S. Agency for International Development has determined after consultation with the Administrator for the Office of Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice of contract action is not appropriate or reasonable for contract actions described in 706.302–70(b)(1) through (b)(3). Accordingly, awards meeting these descriptions need not be synopsisized. Additionally, the Senior Procurement Executive has made a written determination in accordance with FAR 5.102(a)(5)(iii) that contracting officers do not need to publicize in the GPE (FedBiz Opps) solicitations for the categories of awards covered by this class justification.

To ensure that procurements falling under the scope of this class J&A are solicited from as many potential sources as is practicable, Section II, Conditions for Use, establishes minimum solicitation requirements that must be met for contracts awarded using this class J&A. For PSCs specifically, solicitations must be publicized locally consistent with Mission/Embassy practice. For Resident-hire USPSCs, if the position is not publicized locally, the contracting officer must contact at least three (3) individuals, including any person who may have expressed an interest in the position.

This class J&A will not be used when only one source is considered, except in the case of follow-on extensions or renewals with Resident Hire U.S.PSCs or CCN and TCN PSCs subject to the Local Compensation Plan.

Additionally, this class J&A will be posted on FedBizOpps to comply with the requirement in (48 CFR) FAR 6.305 to make publicly available justifications for other than full and open competition.

(7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable:

A determination that the cost to the government is fair and reasonable will be made by the contracting officer and documented in the file prior to award of individual contracts executed using this class J&A. See Section II of this document for the conditions of use for this class J&A.

(8) Description of the market research conducted, and the results or a statement of the reasons market research was not conducted:

Market research was not conducted when preparing this class J&A, given the variety of services and supplies that will be procured under the authorities specified in this justification. Market research will be conducted and documented in the award file by the contracting officer for each procurement awarded using this class J&A. See section II of this document for the conditions of use for this class J&A.

(9) Other facts supporting the use of other than full and open competition:

No other factors are necessary or available to support the use of other than full and open competition, as this class J&A is based on the authorities in AIDAR 706.302-70(b) on Impairment of Foreign Aid Programs and 40 USC 113(e)(2).

(10) Sources, if any, that expressed an interest, in writing, in the acquisition:

As individual purchases made under this class J&A have not been synopsisized, no source list is available. However, as required in AIDAR 706.302-70(c), the contracting officer must ensure that offers have been solicited from as many potential offerors as is practicable under the circumstances. In the event that any potential applicant/offeror expresses an interest in an acquisition in writing, the contracting officer must take this information into consideration in the source selection process and document the file accordingly.

(11) The actions the Agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required:

USAID will comply with full and open competition procedures to the extent possible provided doing so will not impair the foreign assistance programs, as authorized in AIDAR 706.302-70. However, the use of this class J&A is not mandated for all applicable awards. Contracting officers, at their discretion, may fully compete a personal services contract, renewal or extension, when in the contracting officer's judgment the needs of the Agency would be best served by full and open competition.

Additionally, when awards are made using this class J&A, competition is limited to local sources as the requirements are for local personnel or for relatively small value supplies

or services, where competition in the U.S. is not practical. The Agency promotes advertising locally to obtain as many applications/offers as practicable.

(12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

Contracting officers must ensure compliance with all conditions in Section II below, including appropriate file documentation and contracting officer certification, as specified in Section II.B below.

SECTION II. CONDITIONS FOR USE

For each procurement awarded under this class J&A, the contracting officer must ensure that the conditions specified below are met.

(1) Soliciting Limited Sources:

In accordance with AIDAR 706.302-70(c), the contracting officer must ensure that for each award, offers have been solicited from as many potential offerors as is practicable under the circumstances.

A. Resident Hire USPSCs.

For new awards, to satisfy the requirement of soliciting from as many potential offerors as is practicable, COs must:

- Publicize the solicitation locally consistent with Mission/Embassy practice on the announcement of locally-hired U.S. citizen positions; or
- When publicizing locally is not practicable, consider at least three (3) individuals by consulting source lists (e.g., applications or resumes on hand) or conducting other informal solicitation. Consideration must be given to individuals who have previously expressed an interest in the position.

With the exception of extensions or renewals, this class justification must not be used if only one source was considered.

In accordance with FAR 5.102 (a)(5)(iii), the Senior Procurement Executive made a written determination that solicitations for renewals or extensions of a Resident Hire USPSC with the same individual for continuing service at the same mission do not need to be publicized. Additionally, AIDAR section 705.202 provides contracting officers an exception to publicizing the advance notice of proposed contract action for awards covered by this class J&A. However, the contracting officers, at their discretion, may re-compete a personal services contract, when in

the contracting officer's judgment the needs of the Agency would be best served by competition.

B. Contracts with Cooperating Country National or Third Country National PSCs Subject to the Local Compensation Plan.

To satisfy the requirement of soliciting from as many potential offerors as is practicable, COs must publicize the solicitation for a new award locally consistent with Mission/Embassy practice on the announcement of locally-hired CCN positions. With the exception of extensions or renewals, this class J&A must not be used if only one source was considered.

In accordance with FAR 5.102 (a)(5)(iii), the Senior Procurement Executive made a written determination that solicitations for renewals or extensions with the same individual for the same service at the same mission do not need to be publicized. Furthermore, following the Department of State practice, USAID considers CCN PSCs to be of a continuing nature and expects one individual to provide continuous services under a series of sequential contracts. Thus, any extensions or renewals of a CCN or TCN contract subject to Local Compensation Plan may be awarded on a sole source basis. However, the contracting officers, at their discretion, may re-compete a personal services contract, when in the contracting officer's judgment the needs of the Agency would be best served by competition.

C. Local Procurements for Supplies and/or Services up to \$250,000. This applies to procurements where the aggregate amount of the contract does not exceed the limits stated below:

- (i) Local procurements not exceeding the simplified acquisition threshold, as defined in FAR 2.101, were competed as provided in FAR 13.106 except that synopsis in FedBizOpps or display in a public space is not required.
- (ii) Local procurements exceeding the simplified acquisition threshold but not exceeding \$250,000 were publicized locally sufficiently to ensure that a reasonable number of potential offerors were notified. This class J&A may not be used if only one source was considered.

In accordance with FAR 5.102 (a)(5)(iii), the Senior Procurement Executive made a written determination that for all local procurements up to \$250,000 synopsis of a solicitation in GPE (FedBizOpps) or display in a public space is not required. Additionally, AIDAR section 705.202 provides contracting officers an exception to publicizing the advance notice of proposed contract actions in the GPE.

(2) Market Research.

Following the requirements in FAR Part 10, market research must be conducted for each award executed under the authorities of this class J&A. For overseas purchases of supplies/services the market research will help ensure that a reasonable number of potential offerors were notified of a planned procurement. For PSCs, the market research will determine availability of suitable candidates for a selected category of PSCs. For extensions or renewals the market research will help the contracting officers determine if the needs of the Agency are best served by limited competition or a sole source award.

The contracting officer must document the results of the market research in the contract file, or, if market research was not performed, explain the reasons why market research was not performed.

B. Certification Statement and File Documentation.

Contracting officers must include in the contract file a copy of this class J&A as well as a written statement, signed by the Contracting officer, certifying all of the following:

- (i) the contract is being awarded pursuant to AIDAR 706.302-70(b)(1) or (2), as applicable;
- (ii) the conditions in Section II of this class J&A have been met and the file has been appropriately documented; and
- (iii) the cost of the contract is fair and reasonable.

The Contracting officer must document the award file with any other facts supporting other than full and open competition not included in this class J&A.

Approved: _____

Mark Walther, Acting Senior Procurement Executive
United States Agency for International Development (USAID)

Date: _____

TAB 3

**PUBLICIZING AND COMPETITION FOR PERSONAL SERVICES CONTRACTS
NEW AWARDS**

Required CO actions	USPSC				CCN/TCN paid under the local compensation plan
	Washington-based	Off shore	Up to 6 Month of services abroad	Resident Hire	
Must publicize solicitations in FedBizOpps?	Yes, unless an action was not synopsisized based on FAR 5.202, or an exception at FAR 5.102 applies	Yes, unless an action was not synopsisized based on FAR 5.202 or AIDAR 705.202, or an exception at FAR 5.102 applies	No, based on SPE’s determination per FAR 5.102(a)(5)(iii) (originally issued in CIB 97-19). However, COs must prepare and publicize an individual J&A per FAR 6.3 and meet requirements in 706.302-70(c), including soliciting from as many potential offerors as is practicable (e.g. consider at least 3 individuals by reviewing applications or resumes on hand or conducting other informal solicitation). <u>Extensions and renewals of such awards are not authorized.</u>	No, if relying on the class J&A, but must publicize locally consistent with Mission practice (SPE determination in the class J&A per FAR 5.102(a)(5)(iii))	No, if relying on the class J&A, but must publicize locally consistent with Mission practice (SPE determination in the class J&A per FAR 5.102(a)(5)(iii))
Can use class J&A for limited competition?	No, competition must be full and open unless an individual J&A is processed.	No, competition must be full and open unless an individual J&A is processed.	No, competition must be full and open unless an individual J&A is processed.	Yes, if all conditions are met: 1) Publicize locally consistent with Mission practice; 2) Market research; 3) CO certification and file documentation.	Yes, if all conditions are met: 1) Publicize locally consistent with Mission practice; 2) Market research; 3) CO certification and file documentation.
Can use class J&A for sole source award?	No	No	No	No	No
May process individual J&A using exception at AIDAR 706.302-70(b)(1)?	No	Yes, COs must: 1) Request proposals from as many potential offerors as is practicable; 2) Prepare, obtain approvals and publicize a J&A (FAR 6.3). No need to publicize notice of proposed contract action per FAR 5.201 and AIDAR 705.202.			
May process individual J&A using exceptions in FAR part 6?	Yes. When using exceptions in FAR subpart 6.3, COs must : 1) Request proposals from as many potential offerors as is practicable (FAR 6.301) ; 2) Prepare a J&A (FAR 6.303), obtain required approvals (FAR 6.304) and publicize the J&A (FAR 6.305); and 3) publicize notice of proposed contract action (FAR 5.201) unless an exception applies (FAR 5.202).				

FOLLOW ON AWARDS, EXTENSIONS AND RENEWALS

with the Same Individual for Continuous Services at The Same Mission/Office

Required CO actions	USPSC			CCN/TCN paid under the local compensation plan
	Washington-based	Off shore	Resident Hire	
Must publicize solicitations in FedBizOpps?	No, if the authority in 706.302-70(b)(5) is used. (See Tab 1 - 705.102 Availability of solicitations and FAR 5.102(a)(5)(iii)). <u>However, the proposed contract action must be publicized</u>		No, if exception at AIDAR 706.302-70(b)(1) is used (See Tab 1 - 705.102 Availability of solicitations and FAR 5.102(a)(5)(iii))	
What AIDAR exception can be used when only one individual is considered?	706.302-70(b)(5)		706.302-70(b)(1)	
When using the exception above for a follow on action, the CO must:	1) Prepare, obtain approvals and publicize J&A (FAR 6.3); 2) Publicize synopsis of proposed contract action (FAR 5.201); 3) for extensions and renewals of more than one year or \$250,000 obtain approval of Agency Competition Advocate (AIDAR 706.302-70) by submitting the J&A to the M/OAA J&A mailbox at justificationsanda@usaid.gov .		1)Meet the following requirements in class J&A: a) Market research; b) CO certification and file documentation (note that the requirement for soliciting to limited sources does not apply to follow on extensions and renewals); OR 2)Prepare, obtain approvals and publicize individual J&A (FAR 6.3)	
May use exceptions in the FAR part 6?	Yes. When using exceptions in FAR subpart 6.3, COs, must: 1) Request proposals from as many potential offerors as is practicable (FAR 6.301) ; 2) Prepare a J&A (FAR 6.303), obtain required approvals (FAR 6.304) and publicize the J&A (FAR 6.305); 3) publicize notice of proposed contract action (FAR 5.201).			
Must the award always be made to the same individual as described in this table?	No, COs can conduct full and open competition for any follow on or extension at their discretion			